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March 30, 2001

Dear Xxxxx:

This letter is in response to your letter dated January 25, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's Internet website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I am writing this letter to request a General Information Letter (GIL) pursuant to 2 Ill. Admin Code Sec. 1200.120. I understand that GILs discuss tax principles or applications and are not binding on the Illinois Department of Revenue.

I request that you do not make available for public inspection and copying and TRADE SECRET information consistent with § 5 ILCS 140/7 (g) of the Freedom of Information Act which exempts "[TRADE SECRETS] and commercial or financial information obtained from a person or business where the trade secrets or information are proprietary, privileged or confidential, or where disclosure of the trade secrets or information may cause competitive harm" from inspection and copying.

I will suffer great competitive harm from the disclosure of my TRADE SECRET information.

§ 765 ILCS 1065/2 of the Illinois Trade Secrets Act states: 'Trade secret' means information, including but not limited to, technical or non-technical data, a formula, pattern, compilation, program, device, method, technique, drawing, process, financial data, or list of actual or potential customers or suppliers, that:

(1) is sufficiently secret to derive economic value, actual or potential, from not being generally known to other persons who can obtain economic value from its disclosure or use; and

(2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy or confidentiality.

All the information stated in italics is considered TRADE SECRET information consistent with § 765 ILCS 1065/2 because it is information, including but not limited to, technical or non-technical data, a formula, pattern, compilation, program, device, method, technique, or process that is sufficiently secret to derive economic value, actual or potential, from not being generally known to other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy or confidentiality.

I have come across questions as to the jurisdictional rules for application of local Retailers' Occupation Tax, (ROT). I'm am not sure how my TRADE SECRET information will affect, if it affects at all, the application of local ROT. The GIL should address the jurisdictional rules for application of local ROT.

*In situation #1, the server is located in City A, the subscriber's inventory is located in City B, the customer picks up the inventory in City B, salespeople are located in City B, and management is located in City C.*

*In situation #2, the server is located in City A, the subscriber's inventory is located in City B, the customer picks up the inventory in City B, salespeople are located in City B, and management is located in City B?*

Which city's local ROT will apply?

If you have any questions, please do not hesitate to email me.

For your general information, please see 86 Ill. Adm. Code 270.115 of the Home Rule Municipal Retailers' Occupation Tax for guidance concerning jurisdictional questions. In general, the imposition of the various local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order.

Therefore, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. The tax rate is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out-of-State or from another Illinois location is immaterial for purposes of local taxes if the sale occurs through order acceptance in an Illinois jurisdiction imposing a local tax. For these transactions the local tax will be incurred. Although 86 Ill. Adm. Code 270.115 deals with the municipal Home-Rule taxes, the principles outlined in this regulation apply to all local taxes administered by the Department.

If a purchase order is accepted outside the State, but the property being sold is located in an Illinois jurisdiction that has imposed a local tax, then the location of the property at the time of sale will determine where the seller is engaged in business for the purpose of determining the imposition of applicable local sales taxes. See for example subsection (b)(3) of Section 270.115.

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In the instance described in your letter, the software accessed at the remote web-site is merely used to determine whether a customer meets specific credit criteria that have been preselected by the retailer. As your letter states, a retailer located in an Illinois taxing jurisdiction makes use of this software, albeit remotely. Irrespective of representations to the contrary, the actions performed by the remote software program do not constitute acceptance of the purchase order. Rather, the software merely executes a series of instructions, based on credit criteria that have been predetermined by the retailer, in order to provide the retailer with information regarding the credit-worthiness of the retailer's customer. The retailer then uses that information to accept or reject the customer's purchase order. Purchase order acceptance in these circumstances occurs at the location of the retailer, not the location of the remote server.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton  
Associate Counsel

TDC:msk  
Enc.